IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2052 OF 1987

Ceat Tyres of India Ltd. .. Petitioners
Versus
Nashik Municipal Corporation
and Ors. .. Respondents.

Mr.E.P.Bharucha, Senior Advocate with Mr.Manoj Sanklecha, H.M.Vakil and D.D. Mehta i/b. Mulla & Mulla C.B.C. for petitioners
Mr.Gangal with H.Deshpande and Shri Shailya Deshmukh for respondents

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 23rd MARCH 2005.

ORAL JUDGEMENT (Per S.C.Dharmadhikari, J)

. This petition under Article 226 of the Constitution of India challenges Demand notices issued for collection of octroi duty by first respondent Municipal Corporation of Nashik. First respondent Corporation is constituted under the provisions of Bombay Provincial Municipal Corporations Act, 1949 (Hereinafter referred to as BPMC Act).

2. First petitioner is a company incorporated

under the Companies Act and is engaged inter alia in the business of manufacture of scooter/ and passenger car tyres. First petitioner has its factory at Nashik which was within the jurisdiction of the erstwhile Satpur New Township Municipal Council (hereinafter referred to as the Municipal Council). It is not disputed that Municpal Council has levied octroi duty in respect of several goods specified in Octroi schedule dated 1st October 1981 issued under Maharashtra Municipalities (Octroi) Rules 1968 and brought from outside within municipal limits of the said municipal council.

3. It is the case of petitioners that after the notification specifying octroi schedule was issued, they addressed a letter dated 9th October 1981 to the Municipal council pointing out that first petitioner was importing semi finished tyre components from its factory at Bhandup Mumbai, that these components were processed in its factory at Nashik and the semi finished tyres were despatched to the factory at Bhandup for finishing as the said facility was not available at the Nashik factory. This position continued upto 30th March 1984. After this date, Nashik factory of first petitioner started manufacturing

scooter Tyres. The provisions of BPMC Act were made applicable to the area of Municipal Council in November 1982. Consequently, the said area merged with the first respondent corporation.

4. The petition, therefore, raises issue of classification of various articles received by the petitioners at their factory in Nashik and the octroi duty leviable thereon under the Octroi Rules. A further and more detailed narration of facts is not necessary. Suffice it to state that after admission of this petition, this Court stayed demand made vide notice dated 28th February 1992 upon payment of 50% of the amount and an undertaking from petitioners that in the event, the petition is decided against them, they would pay the balance 50% in such time and on such terms as may be determined by this Court. As far as future demands are concerned, this Court directed payment to the same extent i.e. 50% and undertaking in the aforesaid terms. It was also directed that future demands will be governed by final judgement in the present petition. On 9th July 1997, parties filed Minutes of Order in this petition. Clauses 2 to 5 of these Minutes of Order read as under:-

"2. During the pendency of this petition, the respondents by their letter dated 27.11.1990 (being Exhibit AF 1 to the petition) referred the matter of classification of various goods in respect of which octroi demands had been made to the Secretary, Urban Development Department, Government of Maharashtra for their guidance.

3. The Development Commissioner (Industrial) of the Government of Maharashtra after hearing the petitioner by a communication dated 13.2.1991 (being Exhibit AH-I to the petition) decided the issue of classification.

4. The grievance of the Respondents is that opinion/decision of the Development Commissioner (Industrial) dated 13.2.1991 (being Exhibit AH-I to the petition) was arrived at without affording them a personal hearing.

5. In the circumstances, the State of Maharashtra is directed to appoint the Development Commissioner (Industrial) to opine on the issue of classification of the following goods under the Maharashtra Municipality Octroi Rule, 1968 imported by the Petitioner into Nashik.

1. Natural Rubber
2. Synthetic Rubber
3. Reclaimed Rubber
4. Masticated Rubber
5. Compounded Rubber
6. Butyl Rubber
7. Calendered fabrics
8. Plies
9. Rubber compounds
10. Carbon Black
11. Tube Valves
12. Semifinished rubber components
13. other raw materials:-

    (a) Crayons
    (b) Glass beads
    (c) Poly Rolls
    (d) Price stickers
    (e) Electrical/ Engineering goods

(f) China Clay
(g) Bead wire
(h) Bladders
(i) Solvent/ Elasto (Oil)

. and as to whether such of the above items said to be falling under Entry 70 are Raw Rubber or Latex and also the claim of the petitioners for concessional rate of octroi claim under Schedule II Part IA of the Maharashtra Municipality Octroi Rules, 1968. The Development Commissioner (Industrial) is to give his opinion within 10 weeks from today after permitting the petitioners and respondents to lead evidence in support of their respective contentions.

The opinion was sought by parties about the commercial identity and Trade usage of the abovementioned Articles. Additionally, Rubber Board's opinion on this aspect was sought by the respondents.

5. It was also agreed that in case of overlapping of items, petitioners are at liberty to point out the same to the Development Commissioner (Industry) (D.C.). The D.C. was directed to furnish his report to this Court. The report was later on submitted. Thereafter, parties have filed their replies and written submissions. According to petitioners, the issue raised in the petition can be divided in two parts:-

Part (A):- The period between 1981 up to 30th March, 1984, i.e. the period when the petitioners factory imported semi-finished rubber components and returned the same after processing, to their Bombay factory. During this period Octroi was payable at 1% on the cost of processing of the semi-finished rubber components.

Part (B):- With effect from 1st April 1984, the petitioners commenced manufacturing of scooter tyres at its factory in Nashik and the issue of classification of various raw-materials received by the petitioners at Nashik to be consumed in the manufacture of tyres in Nashik.

6. As far as Part A period is concerned, it is contended that Municipal Council passed a resolution on 20th November 1981 by which Octroi at 1% was levied only on value addition till such time as the factory commenced its own production. It is contended that in view of transitional provisions (section 493 read with Appendix IV Clause 5 of B.P.M.C. Act) Octroi Levy by

Municipal Council continued to remain in force. From 1982 to March 1984, petitioners carried out processing of semi finished Rubber goods and returned the same to Mumbai. They paid octroi at 1% of the processing charges. On 15th November 1985, respondents called upon petitioners to pay for the period November 1982 to August 1985 differential duty of Rs.10,38,983/-. It is contended that upon this demand being served by letter dated 29th November 1985, petitioners called upon respondents to furnish the basis of demand and specific rules/ provisions under which the same has been raised. According to petitioners, octroi has been correctly paid in terms of resolution of Municipal Council dated 20th November 1981. It was contended that by a further letter dated 23rd December 1985, a detailed reply was submitted pointing out that the demand of octroi is time barred. It was contended that a personal hearing be given to them in respect of the demand, inasmuch as, period of recovery of octroi is three months from the date the tax has not been purportedly paid. Petitioners also invited the attention of respondents to Section 493 read with Appendix IV Clause 5 of B.P.M.C. Act and contended that the resolution of the Municipal Council has not been

superseded. It continues to hold the field. In the premises, there is no question of payment of any differential amount till 30th March 1984.

7. Insofar as, Part B i.e. period after 30th March 1984 is concerned, it is contended that besides processing semi finished Rubber components for passenger car tyres and returning the same to Bhandup factory, first petitioner also started manufacturing complete scooter tyres at Nashik. Thus, octroi became payable in accordance with the octroi rules. According to petitioners, octroi was leviable at concessional rate stipulated at Part 1A of Schedule II of Octroi Rules. Relying upon Rule 4 of the Octroi Rules, it is contended that the Articles and Goods specified in part 1-A of Schedule II to the Rules like Raw Rubber and Latex lower rate of duty is prescribed. However, this contention of petitioners having not been accepted by respondents, the present petition was instituted on 8th April 1987 to quash and set aside the demand notices dated 15th November 1985, 16th September 1986 and 8th January 1987. It is contended that the demands are bad in law as they have been made without following the principles of natural justice. In any event, the demands

were time barred.

8. Thus, the issue arising for consideration in this petition is whether the contention of petitioners with regard to classification of Raw Rubber and Latex as well as other articles at First schedule to Octroi Rules is correct and whether the demands of the respondents based upon classification of the articles brought for consumption and use within the municipal limits are erroneous and liable to be quashed and set aside.

9. As is revealed from the Minutes of the Order, that after filing of this petition, respondents vide letter dated 27th November 1990 referred the matter to the Secretary, Urban Development Department seeking directions to the Municipal Corporation. It appears that on 13th February 1991, Commissioner of Industries, State of Maharashtra heard petitioners but no hearing was given to the respondents. Therefore, the order/ direction issued by him on 13th February 1991 was set aside and this Court recorded agreement of petitioners to once again refer the matter to the D.C.

10. The D.C. was to opine on classification of 13 items listed in the order dated 9th July 1997 passed by this Court. He was also to opine on petitioners' request for concessional rate of octroi under Part 1A of Schedule II to the Octroi Rules.

11. In pursuance of the order dated 9th July 1997, personal hearing was granted by D.C. to petitioners and the respondents. Petitioners at this personal hearing pointed out that 10 items are subject matter of dispute. It was pointed out that classification of items at Sr.No.7, 8, 2, 6, 5 and 9 need not be made independently as they are same goods. In support of their case of concession in octroi duty, petitioners filed affidavits of Dr.Potnis, Technically qualified expert and Mr.A.R.Varadajan another expert from Rubber Industry. It is petitioners' case that in Rubber Industry, Synthetic Rubber, Reclaimed Rubber, Calendered Fabrics and Compounded Rubber are all considered as Raw Rubber. According to the petitioners, they have to undergo process of vulcanisation before they cease to be Raw Rubber. Sofar as Tube Valve is concerned, it was contended that it is not a Ferrous Metal like Iron or steel but it is made of Brass, which is

commercially considered as non ferrous metal. The affidavits and the pleas in writing are part of written submissions filed before the D.C. by petitioners on 20th October 1997.

12. The aforesaid contentions were refuted by respondents and they too filed their written submissions before the D.C. Petitioner filed their rejoinder and pointed out that form 14 was regularly filed by them. They contended that the goods imported by them within municipal limits were duly declared. Apart from this, reliance was placed by petitioners on a clarification issued by Rubber Board dated 4th November 1997. According to petitioners, this clarification clinches the issue of classification in their favour. Even the Rubber Board has clarified that Calendered Fabrics, Synthetic Rubber, Reclaimed Rubber and Rubber Compound are all Raw Rubber. They are in unvulcanised form.

13. The D.C. passed an order dated 26th November 1997 (Exh.AH-9 page 364A - 287). He held that petitioners are not entitled to the benefit of concessional rate of Octroi in respect of :-

(a) Re-claimed rubber;
(b) Compounded Rubber;
(c) Calender Fabrics;
(d) Semi-finished rubber components
(e) other raw materials except Crayons.

14. Now petitioners are aggrieved by classification of only first three items viz.,

(a) Re-claimed rubber;
(b) Compounded rubber;
(c) Calender fabrics;

15. In the amended writ petition, petitioners have challenged the findings of D.C. to this extent only. Respondents filed their affidavit and challenged the findings of D.C. in respect of all items, except Natural Rubber, where D.C. held in favour of petitioners.

16. Before setting out rival contentions, it is worthwhile noting that as far as the following items are concerned, classification made by D.C. is not disputed even by respondents:-

(a) Glass bids;

(b) Poly Rolls;

(c) Electrical/ Engineering goods;

(d) Beed-wires;

(e) Bladders;

(f) Solvent/ Clasto (Oils);

17. Mr.E.P.Bharucha, learned Senior Counsel appearing for petitioners submits that classification as made by respondents as well as D.C. in respect of three items is wholly erroneous, irrational, arbitrary and violates the mandate of Article 14 of Constitution of India. He submits that no tax can be imposed without authority of law. He submits that the Articles which have been classified in Schedule I to Octroi Rules clearly demonstrate that as long as there is no process undertaken or anything done by which the aforesaid articles undergo a change, they have to be treated as Raw Rubber. Respondents are in error while contending that reference made to Raw Rubber and Latex in the Schedule is only to Crude or a Raw Rubber prepared from the leaves bar or Latex or Rubber plant i.e. natural rubber. The whole basis of classification by respondents is that the classification as made cannot be extended artificially to the aforesaid Articles by holding

that man-made Rubber in the Crude form or man-made Rubber undergoing chemical and other process is excluded therefrom. In other words, the stand of respondents that only natural rubber falls under entry 70 and is entitled to get a concession is unsustainable.

18. Mr.Bharucha submits that as far as Natural Rubber is concerned, parties are ad-idem. However, as far as Synthetic rubber is concerned, the D.C. has rightly accepted petitioners' contention that it is Raw Rubber and entitled to concessional rate of Octroi under Part 1A of Schedule II to the Octroi Rules. He submits that it is surprising that this aspect of the matter was not put in issue before the D.C. by respondents but now on affidavit they are disputing the correctness of the findings recorded by D.C. He submits that the stand of the Corporation that Synthetic Rubber when it is brought in a Raw Rubber form, only would be entitled to exemption under the aforesaid provision is not supported by any materials. Therefore, the stand of the petitioners that Synthetic Rubber in its Raw Form would be entitled to get the benefit of Part 1A of IInd Schedule to Octroi Rules deserves to be accepted.

Mr.Bharucha in support of his contention that Synthetic Rubber is in fact Raw Rubber commercially as well as technically, relies upon the following materials:-

(a) "Natural Rubber and Synthetics" by P.W. Allen wherein it is observed that though there are different technologies for manufacturing natural and synthetic rubber in asmuch as natural rubber is created by nature within the tree while synthetic rubber requires synthesis of monomers followed by polymerisation. However, thereafter the technologies converge and synthetic rubber like natural rubber makes its first appearance in the form of aqueous suspension of rubber particles, the latex. Processing of the latex into marketable and dry raw rubber follows a similar pattern for both.

(b) Certificate from Indian Rubber Manufacturer Research Association on examination that Synthetic rubber is raw rubber;

(c) Encyclopaedia of Chemistry by

Clifford A Hample observing that both natural and synthetic rubber posses similar elastic properties.

(d) ISI glossary has defined raw rubber as natural or synthetic rubber. It is well settled that ISI can be looked into to understand how a product is understood in the trade.

(e) Certificate from M/s.Synthetics and Chemicals wherein they have stated that they sell Synthetic rubber to Ceat and the same is raw rubber in primary form.

(f) Affidavit of Dr.Potnis a person with technical expertise who has on oath stated that synthetic rubber has no elasticity, no tensile strength and abrasion/solvent resistance in the raw form before vulcanisation.

(g) Affidavit of A.R.Vardarajan a commercial person in the rubber trade, states that commercially Synthetic rubber is commonly regarded as raw rubber.

(h) The Rubber Board by its letter dated 4th November 1997 expressly regards Synthetic Rubber as raw rubber."

19. In addition Mr.Bharucha places reliance upon a decision of the Supreme Court in the case of Dunlop India Ltd. & Madras Rubber Factory Ltd. Vs. Union of India & Ors. reported in 1983 (13) E.L.T. 1566 (SC). Mr.Bharucha further submits that Synthetic Rubber is obtained by Artificial process and such process was not known when the Octroi Rules were brought into force in 1968, is a contention raised by the respondents for the first time in their affidavit filed on 4th October 2004. He submits that this contention is untenable because Synthetic Rubber technology is much older than the Octroi Rules which were brought into force in 1968. In this behalf he relies upon an extract from Encarta Encyclopedia.

20. In any event, submits Mr.Bharucha that while construing any Legislation, future developments in science and technology will have to be taken into consideration. Based upon this principle of interpretation, words would have to

be given an extended meaning. He submits that it would be unreasonable to confine words used in a Legislation to the meaning attributable to them at the time Statute was enacted. In this behalf he places strong reliance upon following decisions of the Supreme Court.

(i) Sr.Electric Inspector Vs. Laxminarayan Chopra (A.I.R. 1962 (SC) 159 para 8.

(ii) State Vs. S.J.Choudhary (AIR 1996(SC 149) para 9;

(iii) M/s.Laxni Video Theater Vs. State of Haryana (A.I.R. 1993 (SC) 2328 para 8;

(iv) Porritts & Spencer (Asia) Ltd. Vs. State of Haryana (A.I.R. 1979 (SC) 300;

21. As far as re-claimed Rubber is concerned, Mr.Bharucha challenges the finding of the D.C. by contending that re-claimed Rubber is also Raw Rubber, both commercially as well as technically. He takes us through the affidavits of Dr.Potnis and Mr.Varadrajan. He also takes us through the letter dated 4th November 1987 addressed by Indian Rubber Manufacturers Association. He submits that in the light of this letter, the D.C. held that re-claimed Rubber cannot be considered as Raw Rubber. He submits that the D.C. misread and mis-interpreted the certificate

dated 4th November 1997. He submits that meaning as understood in commercial parlance of such words/ terms is relevant and in that behalf, he places reliance upon the above decisions of the Supreme Court.

22. As far as masticated rubber is concerned, Mr.Bharucha contends that the D.C. has held that it is Raw Rubber and entitled to concessional rate of octroi under Part 1-A of Schedule II to the Octroi Rules. He submits that even if respondents are challenging this finding now on affidavit, their pleas are totally baseless and devoid of merit. In support of his submission that Masticated Rubber is in fact Raw Rubber, Mr.Bharucha places reliance upon certificate dated 18th August 1997 from Indian Rubber Manufacturers Research Association, in addition to the affidavit filed by Dr.Potnis and Mr.Varadrajan. He also relies upon Rubber Board's letter dated 4th November 1997 and an unreported decision of Kerala High Court in W.P. 8180 of 1982.

23. Mr.Bharucha submits that on the basis of this material, D.C. has accepted that Masticated Rubber is Raw Rubber. He submits that nothing

has been produced by respondents, either before D.C. or before this Court to demonstrate that Masticated Rubber is not Raw Rubber. Mr.Bharucha relies upon a decision of the Supreme Court reported in 1997 (89) E.L.T. 16, wherein it is clearly laid down that burden is on the Revenue as far as classification is concerned. He submits that this burden has not been discharged. On the other hand, petitioners produced evidence in the form of affidavits, mainly from commercial and technical field as well as in Rubber Industry to point out that Masticated Rubber is Natural Rubber. Therefore, the finding of D.C. in that behalf be upheld and the respondents contention be rejected.

24. As far as Compounded Rubber is concerned Mr.Bharucha challenges the finding of D.C. that it is not Raw Rubber and places reliance upon the same materials. He submits that Compounded Rubber is Raw Rubber mixed with chemicals and fillers and it is not finished product. It has a limited shelf life. Before vulcanisation, Rubber Compound will only be a mass of rubber and is shapeless. Therefore, Compounded Rubber is classifiable in entry 86 of Schedule I to the Octroi Rules as a residuary item. It is not

classifiable as Rubber or Rubber goods or Articles made on Rubber falling under Entry 70 of the Octroi Rules. He submits that Compounded Rubber is obtained when Raw Rubber is mixed with certain chemicals and carbon black. He submits that the materials produced by petitioners in this aspect have not been dealt with by the D.C. nor is any reference is made to the affidavits filed before him in this behalf. He submits that certificate of the Rubber Board does not in any manner support the case that Compounded Rubber is not Raw Rubber. On the other hand, proper and complete reading of the same would go to show that even the Rubber Board is of the opinion that Compounded Rubber is Raw Rubber and not independent article.

25. As far as Calender Fabrics are concerned, Mr.Bharucha challenges the findings of D.C. and contends that it is nothing but Raw Rubber. He submits that D.C. has completely ignored petitioners' pleas that Calender Fabrics are not vulcanised. They are used for manufacture of tyres. They cannot be considered as Rubber goods. Reliance has been placed by Mr.Bharucha on various books. He submits that Calender Fabrics when not vulcanised, cannot be considered

to be Rubber articles or products and, therefore, would fall under residuary entry i.e. Item 86 of Schedule I of Octroi Rules. The D.C. is in error in classifying them under entry 70. He submits that D.C. ignores voluminous evidence available to him and, therefore, his findings on this item be also set aside.

26. Mr.Bharucha clarifies that as far as semi finished Rubber Components and other raw materials are concerned, D.C. has rejected the case of petitioners except Crayons. The finding and conclusion of D.C. is acceptable to petitioners. As far as Crayons are concerned, although D.C. holds that the same are classifiable under Entry 86 they are entitled to concessional rate of Octroi under Part 1A of Schedule II. Respondents are disputing this only for the sake of raising dispute and no materials have been placed by them in that behalf.

27. Finally, Mr.Bharucha relying upon a decision reported in 1987 E.L.T. 580 submits that if there is a doubt in the matter of classification of any of the items, then such doubt should be resolved in favour of the assessee and not the Revenue.

28. In the light of the aforesaid, Mr.Bharucha submits that demands in Part A be quashed and set aside as being time barred and vitiated by breach of principles of natural justice. As far as demands in Part B are concerned, they be classified in the manner suggested above and benefit be granted in payment of Octroi Duty.

29. On the other hand, Mr.Gangal, learned Counsel appearing for respondents submits that petitioners cannot raise any plea of estoppel as far as the dispute raised by the respondents to the classification made by D.C. He submits that even if this petition is filed by petitioners, it is equally open to respondents to assail the finding and conclusion of D.C. on certain items. He submits that parties have agreed before this Court that they would be at liberty to dispute the correctness of the findings by filing written submissions. In any event, submits Mr.Gangal, that the order of D.C. is subject to the final orders and decision of this Court. He submits that there is no question of estoppel in such matters. Ultimately, whether the classification of respondents in respect of these items is vitiated as alleged by petitioners has to be

adjudicated and decided by this Court. Therefore, there is no substance in the contention of petitioners that respondents cannot dispute the classification for items in question by D.C.

30. It is further contended by Mr.Gangal that the dispute is confined to the items which have been referred to by Mr.Bharucha. However, he submits that the controversy will have to be decided in the light of the Octroi Rules 1968. He submits that setting and context in which these Rules were framed cannot be overlooked. He submits that at the relevant time man-made Rubber or man-made Rubber items which are covered by various items were not known to the Trade. He submits that clause 1 of Schedule Part 1-A deals with "*Raw Rubber*" and "*Latex*" mentioned in Entry 70. He submits that this will have to be read in the back drop of the provisions of Rubber Act. He submits that the Rubber Act was occupying the field at all relevant times. He invites our attention to section 3(4) of that Act defining the term "Rubber". He submits that Crude Rubber and Latex have been independently defined. Further, he invites our attention to the definition of the term Rubber plant defined in

Section 3(i) of the Rubber Act. In his submission, if the aforesaid definitions are read together with Clause 1 of Schedule Part 1-A of the Octroi Rules, only one conclusion is possible viz., that items on which Octroi duty is leviable, are natural rubber. A reference is made to Raw Rubber and Latex. It is only in the context of Crude or Raw Rubber prepared from leaves, Bark or Latex or Rubber plant and it cannot be extended artificially or otherwise. In other words, man-made Rubber in Crude form or man-made Rubber which has undergone chemical and other process is not what is contemplated by the Schedule and, therefore, no distinction of such nature is permissible. Therefore, he submits that concession is available only to natural Raw Rubber. He submits that no concession is available insofar as the items which are mentioned in the order dated 9th July 1997.

31. As far as individual items are concerned Mr.Gangal submits that Natural Rubber is concerned, it is entitled to concession. He, therefore, does not join issue with petitioners in that behalf. However, he submits that the finding and conclusion of D.C. with regard to Synthetic Rubber is completely erroneous and

unsustainable. He submits that it is not proper to term the said item as Raw Rubber. He submits that Synthetic Rubber is man-made Rubber. It is manufactured article. Therefore, provisions of Rubber Act would not permit levy of concessional duty of Octroi insofar as Synthetic Rubber is concerned.

32. As far as Masticated Rubber is concerned, Mr.Gangal invites our attention to the letter from Rubber Board and submits that Masticated Rubber ceases to be Raw Rubber once it has undergone the process mentioned in the letter of Rubber Board. Therefore, it is not entitled to any concessional rate as claimed by petitioner.

32. As far as Re-claimed Rubber, Compounded Rubber, Calender Fabric, Rubber Compound and Semi-finished Rubber Compound are concerned, he submits that these items are not Raw, Crude or Natural Rubber. The opinions relied upon by petitioners are of no assistance as they are contrary to the provisions of Rubber Act and the Entry itself. He submits that on petitioners own showing Compounded Rubber is Raw Rubber mixed with chemical fillers and is not a finished product. It has limited shelf life. The moment

Raw Rubber is mixed with some chemicals and undergoes any process it ceases to be Natural or Raw Rubber as claimed by petitioners and, therefore, there is no substance in their contentions. He disputes the classification made by petitioners of Compounded Rubber under Entry 86. He submits that Entry 86 is residuary entry whereas Compounded Rubber is covered specifically by Rubber goods. He submits that as far as Calender Fabrics are concerned, D.C. has held that it is Rubber product and not entitled to any concessional rate. He submits that entries are to be interpreted in the light of the Schedule and in the context of nature of duty. He submits that opinion of experts cannot govern or control the entries in Schedule to Octroi Rules. Therefore, the contentions are wholly untenable.

34. Mr.Gangal complains that some more items which are not part of petition when instituted are now sought to be pushed through by the petitioners. In any event, he submits that the opinion given by Rubber Board with regard to these items has to be accepted.

35. Mr.Gangal also places heavy reliance upon affidavits filed by respondents. He submits that

affidavits be read as part and parcel of the written submissions. He submits that in the affidavit, respondents are relying upon the opinion from the Highest Body of Government of India i.e. Rubber Board, Kottayam. He submits that petitioners' claim insofar as Reclaimed Rubber, Compounded Rubber and Calender Fabrics is devoid of any merit and frivolous. He invites our attention to the correspondence and submits that as on December 2002, petitioners are required to pay a sum of Rs.15,42,425/-. Mr.Gangal submits that as far as Carbon Black and Tube Valves are concerned, the same are covered by Entry 86, 73 and 74 of Octroi Schedule to the Octroi Rules.

36. In substance, it is contended by Mr.Gangal that only Natural and Raw Rubber is covered by Rubber Act. Synthetic Rubber, Butyl Rubber, Poly-Butyl Rubber BPDM Rubber are items which are Petroleum based Polymer products manufactured with chemical process having chemical ingredients and hence not covered by the Octroi Rules. Such items cannot be termed as Raw Rubber or Latex which alone are entitled to get a concessional rate. Respondents support the conclusion of D.C. and they are re-inforced by communication from

Rubber Board. Mr.Gangal, therefore, submits that total differential amount of Octroi dues payable by petitioner till August 2004 comes to Rs.27,76,39,619/- out of which petitioners have paid only 50% of the amount i.e. Rs.13,79,51,013/-. He submits that the litigation has been prolonged and the balance sum of nearly Rs.14 Crores is legitimately due and payable to the Corporation with regard to goods admittedly brought for use within Municipal limits.

37. Mr.Gangal submits that petitioners have not filed any appeals. They have straight away approached this Court on the issue of classification. However, they have suppressed material facts. They have also enlarged the scope of adjudication by introducing more items and goods. Apart from the fact that the conduct of petitioners in prolonging the litigation disentitles seeking discretionary and equitable reliefs under Article 226 of the Constitution of India, additionally, the classification made by petitioners is not supported by a plain reading of entries. For all these reasons, petition be dismissed with heavy compensatory costs.

38. With the assistance of learned Counsel for parties we have carefully gone through the petition, its annexures as well as other materials. We have also perused written submissions and the affidavits together with their annexures.

39. Maharashtra Municipalities (Octroi) Rules, 1968 as modified upto 31st May 1985 have appended to them Schedule I. At the relevant time, these Rules were in the force and invoked by respondents. Their demand of octroi duty is in accordance with them. It is not in dispute that these Rules came into force on 14th August 1968. Further, it is not in dispute that subject to provisions of the Act, the Rules and By-laws made thereunder, Octroi shall be leviable by Municipal Councils in respect of several goods specified in this schedule. The rate at which Octroi shall be levied by the Council on any goods shall not exceed the maximum rate specified in column 3, as the case may be in Column 5 and may not be less than the minimum rate specified in Columns 4 and 6. Rule 4 of the Octroi Rules reads as under:-

> "4. Certain goods exempted wholly or partially from octroi or on which octroi

is payable at lower rate - Subject to the conditions or exception (if any), mentioned against any of the goods specified in Schedule II -

i) no octroi shall be payable in respect of the goods specified in Part I of that schedule;

ii) octroi shall be payable at a lower rate by certain industrial undertakings in respect of goods mentioned in Part I-A of that schedule;

iii) octroi shall not be payable or shall be payable partially in respect of all or any of the goods specified in Part II of that schedule, if the Council so decides by a resolution passed under Rule 5."

40. Schedule I shows the goods liable to octroi and the maximum and minimum rates leviable. Under this schedule, there are several clauses. In the instant case, we are concerned with clause (VII). It deals with piece goods and other textile fabrics and materials, leather and articles of leather and Rubber goods. Entry 70 falling in clause (VII) reads as under:-

{ "70. Rubber, rubber goods, gatta purcha and articles made thereof (wholly or partly) rubber solution, raw rubber and latex but excluding toys made therefrom:-}

[Rs.4.00 maximum and Paise .50 minimum.]

Since reference is made to entry 86 which is a

residual entry, it is necessary to reproduce the same as well:-

> {"86. Goods not included in any of the above items and not specifically exempted in Schedule II:-}
>
> [Rs.1.50 maximum Paise 0.25 minimum]

41. As far as Schedule II is concerned, we are not concerned with Part I but with Part I-A. It is entitled as under:-

> "*List of goods on which octroi shall be payable at a lower rate by certain industrial undertakings*"

Clause (1) of Part I-A reads as under:-

> "(1) All goods specified in entries 6(c), 35, 40, 64, 65, 71, 77 and 86 in Schedule I and Khobra mentioned in entry 25, raw rubber and latex mentioned in entry 70 in that Schedule, when imported by an industrial undertaking for use as raw material for processing within that undertaking and when declaration in respect thereof is issued by the undertaking in Form 14, shall be subject to octroi by any Council at a rate not exceeding 1.25 per cent and not less than 0.25 per cent."

42. From a bare perusal of the aforesaid, it is clear that Entry 70 is dealing with Rubber goods and articles made thereof (wholly and partly), rubber solution, raw rubber, latex but excluding toys made therefrom. As far as lower

rate is concerned that is available only insofar as goods specified and entries mentioned in Clause (1) of Part I-A. As far as the matter in hand is concerned, the issue is whether lower rate is payable in case of Raw Rubber and Latex mentioned in Entry 70 when imported by an industrial undertaking for use as raw material for processing within that industry and when a declaration in respect thereof is issued by undertaking in Form 14. The octroi in that behalf is between 0.25 to 1.25 per cent.

43. It is not in dispute that on the goods in question, octroi duty is leviable and payable. However, it is contended that Raw Rubber and Latex mentioned in Entry 70 is taxed at lower rate and three main articles in this petition are nothing but Raw Rubber. Rest of the articles are not covered by Entry 70 and, therefore, covered by residuary entry. As far as they are concerned also lower rate of octroi is payable.

44. In a recent decision reported in A.I.R. 1998 S.C. 2440, (Municipal Corporation of Thane Vs. Asmaco Plastic Industries) the Supreme Court has observed that classification of goods made in entries is not on any scientific basis and

heading as such in any one group does not by itself control the meaning to be attached to each of such groups. As far as the value of technical literature is concerned, this is what is observed by the Supreme Court in para 8 of this decision:-

> "8. Learned Counsel on either side relied on technical literature on the matter to impress upon us the strength of their respective cases. We do not think it would be appropriate to rely upon such data to interpret the Entry in question in one manner or the other because in Tax enactments when particular commodities are brought to taxation the meaning attributed to the commodities will be with reference to their commercial parlance, that is, if those who deal with the goods understand the said goods in one manner or the other. The technical material though of course may be useful on certain aspects, the same will not be decisive of the matter."

45. We have to, therefore, construe entry 70 in the light of this well established principle. The entry is very widely worded. Advisedly, the Legislature does not rule out or exclude any article of Rubber. All that is excluded are toys made from the articles specified in Entry 70. The entry is so widely worded that it will not be possible to cut down its width or narrow it in any manner. In the case before us, Raw Rubber is processed and sent for manufacture of tyres of

passenger cars and scooter. Now, admittedly, scooter tyres are manufactured at Nashik itself by petitioners. Therefore, whether Raw Rubber means Natural Rubber and that alone is entitled to concessional rate, is the question before us.

46. It is clear that the Octroi Rules contain Schedule II Part I-A, clause 1 thereof specifically states that Raw Rubber and Latex mentioned in Entry 70 in Schedule 1 when imported by industrial undertaking for use as raw material for processing within that undertaking and when declaration in respect thereof is issued by the undertaking in Form 14, then, it shall be subject to octroi at a rate mentioned in the said clause. Obviously, the intention is that Raw Rubber and Latex mentioned in Entry 70 in Schedule I when imported by an industrial undertaking for use as raw material for processing within that undertaking is entitled to a lower rate of Octroi. It is not disputed nor it could be disputed that factory of petitioners at Nashik is an industrial undertaking. It is not disputed before us that the subject goods are imported by petitioners for use within their factory premises at Nashik. This is clear from the averments in the petition that articles and goods in question

are raw materials for the purpose of ultimate product viz., passenger and scooter tyres. Therefore, the only question is whether they can be termed as "Raw Rubber".

47. We find much substance in the contentions raised by Mr.Bharucha on the principle to be applied for classification. He has placed reliance upon a decision of the Supreme Court in the case of Dunlop India & Madras Rubber Factory Vs. Union of India reported in 1983 E.L.T. 1566 (S.C). There the Supreme Court has observed that meaning given to Articles in a fiscal statute must be as people in the trade and commerce conversant with the subject generally treat and understand them in the usual course. There, the Supreme Court also observed that once an article is classified in a distinct entry, the basis of classification is not open to question. Before the Supreme Court in that case the question was whether the substance known as "*Pyratax-Vinyl Pyeridine Latex (for short, V.P.Latex) is not rubber raw classifiable under item No.39 of the Indian Tariff Act, 1934*. The appellants before the Supreme Court were manufacturers of automotive tyres. The aforesaid item was required in the manufacture of tyres. There it

was contended that the said article/item is not manufactured in India and has to be imported from outside the country. It is one of the essential ingradients in the course of manufacture of automotive tyres. The authorities exercising powers under Customs Act upheld the appellants' contention to the effect that V.P.Latex is classifiable under Item 39 of the Schedule as Raw Rubber. This classification was revised by the Central Government in a suo mottu proceeding initiated under section 131(2) of the Customs Act, 1962. The Central Government thereafter held that the said Article was classifiable under Item 87 prior to 1st March 1970 and thereafter under new item No.82(3) of the Indian Tariff Act. On this basis, the duty leviable on the said articles by the appellants came to be revised. The orders of the Central Government were under challenge and after referring to the relevant entries the Supreme Court has observed thus:-

> "31. It is well established that in interpreting the meaning of words in a taxing statute, the acceptation of a particular word by the Trade and its popular meaning should commend itself to the authority.

"36. We are however, unable to accept the submission. It is clear that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. But once an article is classified and put under a distinct entry, the basis of the classification is not open to question. Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance, we then see no difficulty for statutory classification under a particular entry.

37. It is good fiscal policy not to put people in doubt and quandary about their liability to duty, when a particular product like V.P.Latex known to trade and commerce in this country and abroad is imported, it would have been better if the article is eo nomine, put under a proper classification to avoid controversy over the residuary clause. As a matter of fact

in the Red Book (Import Trade Control Policy of the Ministry of Commerce) under Item 150, in Section II which relates to "rubber, raw and gutta percha, raw", synthetic latex including vinyl pyridine latex and copolymer of styrene butadiene latex are specifically included under the sub-head "Synthetic Rubber". We do not see any reason why the same policy could not have been followed in the I.C.T. book being complementary to each other. When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause. The question of competition between two rival classifications will, however, stand on a different footing.

38. It is not for the Court to determine for itself under article 136 of the Constitution under which item a particular artical falls. It is best left to the authorities entrusted with the

subject. But where the very basis of the reason for including the article under a residuary head in order to charge higher duty is foreign to a proper determination of this kind, this Court will be loath to say that it will not interfere.

39. In this case there is rather voluminous evidence from the standard authorities in favour of V.P.Latex being a component of SBR which is admittedly classified under rubber raw. But assuming, and only assuming, that evidence is balanced, the best course in a fiscal measure is to decide and fix the entry under which the article comes, otherwise it will give rise to adoption of varying standards where uniformity should be the rule.

48. In para 18 of affidavit dated 4th October 2004 filed by Respondents this is what is stated:-

"18. I say that, as regards the findings given by the learned Development Commissioner (Industries) his findings that raw rubber ceases to be the raw

> rubber after vulcanisation process, which lends it strength and stability is a correct finding. Therefore rubber that has gone vulcanisation is no longer a raw rubber is also true."

49. Mr.Gangal assails the basis of conclusion of D.C. by contending that once Raw Rubber undergoes any process it will cease to be Raw Rubber or Latex and must necessarily fall under Item 70 where no concessional rate is applicable. He contends that the D.C. has erred because Rubber that has undergone vulcanisation is no longer Raw Rubber. He submits there is no reasoning by D.C. holding that rubber before vulcanisation is raw rubber and hence his report and opinion will have to be rejected by this Court.

50. The moment it is shown that what is imported within municipal limits is used as raw material and is raw rubber, then the same, although covered by Entry 70 would be subjected to lower rate of octroi by virtue of Clause 1 of Part I-A of the second Schedule to the Octroi Rules. However, Mr.Gangal desires that we should find out as to whether the goods in question are raw rubber or could be termed as such. He urges that we should go into these aspects independent

of the opinions of D.C. but in the light of Rubber Act.

51. It is do doubt true that it is contended by Mr.Gangal that classification of Rubber under Entry 70 does not sub-divide it as before vulcanisation or after vulcanisation. He submits that the controversy is not what is rubber but what is raw rubber.

52. We have to consider the matter in the light of the undisputed factual position and further in the backdrop of opinion of Rubber Board. Both sides rely upon the same. If this Authority terms the article in question as Raw Rubber, then parties cannot be permitted to challenge the opinion. In the peculiar facts of this case, Rubber Board’s view on the items will be decisive. In this case the Rubber Boar’s opinion was sought on the issue whether the inputs are Raw Rubber or not in the commercial sense. Even the D.C. was approached for this reason only. The view of board clearly indicates as to how these goods are understood by those who deal with them in commercial parlance. Even the Entry 70 is clear. It talks of Rubber, Rubber goods and Raw Rubber. The intention is to

include both Natural and Raw Rubber.

53. Petitioners are aggrieved by the classification of Re-claimed rubber, Compounded Rubber and Calender Fabrics. Respondents dispute the finding and conclusion of Synthetic Rubber and Masticated Rubber. Rubber Board has referred to the definition of Rubber Act. Definition of Rubber in the Rubber Act is exhaustive. The opinion of the Rubber Board on Synthetic Rubber is contained not just in one communication but is now also set out in the fax message dated 15th June 2004. The Rubber Board says Raw Rubber as such is not defined in Rubber Act. However, it accepts the plea of petitioners that Masticated Rubber is believed to be masticated natural rubber. It is opined that it is also a raw rubber as mastication does not involve any substantial chemical change as to classify the same in any category other than raw rubber. Therefore, Masticated Rubber, according to Rubber Board is also Raw Rubber. Natural Rubber is Raw Rubber is undisputed. As far as Synthetic Rubber is concerned, it has been very clearly observed by the Rubber Board that it is used as raw material for manufacture of rubber products and can be taken as raw Synthetic Rubber. This is

how it is understood in its commercial parlance by those who deal with the said goods. No other material is placed before us to take a different view.

54. Once it is held that Sybthetic Rubber is raw rubber and is a raw material for manufacture of rubber products, it is not necessary to go into other details. For the purpose of Entry 70, it is entitled to concessional rate of duty. Petitioners are therefore right in seeking levy of octroi duty at lower rate on Synthetic Rubber and Masticated Rubber. The pleas of respondents in this behalf are not acceptable for the reasons contained hereinabove and we do not see that the D.C. was in any way in error in classifying them as being subject to lower rate of octroi.

55. Petitioners dispute the findings of D.C. on Re-claimed Rubber. In this behalf, the Rubber Board states that Re-claimed Rubber is Rubber re-generated from waste or used rubber products by processing of de-vulcanisation. It cannot be classified as a form of raw rubber as it contains number of other ingredients which were originally used for manufacture of rubber products and also re-claiming agents and other additives which were

used for the process of re-claimation. However, the Rubber Board at the same time says that Re-claimed rubber is used as raw material by the Rubber Products Manufacturing Industry. Petitioners assail the conclusion of D.C. They submit that D.C. has misread the opinion of Rubber Board. They also invite our attention to the decisions of the Supreme Court. In our view, once the Rubber Board says that re-claimed rubber cannot be classified as a form of raw rubber then merely because it is used as raw material by the Automotive Tyre Manufacturing Industry would not enable petitioners to claim lower rate of octroi duty thereon. We, therefore, need not go into the correctness of affidavits filed by petitioners to support their plea that re-claimed rubber is nothing but raw rubber having no elasticity, tensile strength, duration or solvent resistance. The Rubber Board in clearest terms says that it is not Raw Rubber and assigns good reasons for the same. Therefore, we find no basis for petitioners submission that commercial understanding should prevail and the opinion of Rubber Board cannot be the final word. The basis for this conclusion of D.C. is also a letter addressed by Indian Rubber Manufactures Association and there is, therefore, good reason

to uphold finding of D.C. on this item. These opinions are indicative of fact as to how these goods are understood in commercial parlance, by those who deal with them.

56. Similarly, Compounded Rubber/ Rubber Compound is also in the opinion of Rubber Board not Raw Rubber and the D.C. as well as Rubber Board having assigned reasons for not holding the same to be Raw Rubber we do not deem it proper to go into the aspect that with its limited shelf life and before vulcanisation it will only be a mass of Rubber and, therefore, no different from Raw Rubber. Petitioners' case is that Compounded Rubber is classifiable under Entry 86 as a residuary item. We are unable to accede to this submission. There is no question of going to the residuary entry in this case. Entry 70 covers items Rubber, Rubber goods, Rubber Solution, Raw Rubber and Latex but excluding toys made therefrom. In our view, the Rubber Board clearly says that compounded rubber/ rubber compound is processed form of Rubber. It may not be a final product but at the same time it is not proper to classify it as form of Raw Rubber. Such an item is clearly falling under Entry 70 and therefore, we so not find that there is any error committed

by the D.C.

57. The D.C. has also opined very clearly that calender fabrics are not raw rubber. His opinion is supported by the Rubber Board which goes to the extent of observing that Calender Fabric is not rubber at all. It is a textile material made from cotton rayon nylon polyester or even metallic fibre. These are used as reinforcing materials for the manufacture of composite products such as tyres built-ins etc. Therefore, it is clear that it is not entitled to lower rate of Octroi. Once it is not rubber at all according to Rubber Board then, the other aspects as to whether before they undergo process of vulcanisation, they are just fabrics coated with raw rubber compound or not need not also be decided by us.

58. For the reasons mentioned hereinabove, we uphold finding of D.C. with regard to calender fabrics, plies and rubber compound. As far as other raw materials are concerned, D.C. has rejected the case of petitioners and his finding is accepted by petitioners.

59. In the light of the above materials, we do

not find that the opinion of D.C. requires any interference by us. More so, when his opinion and conclusion is reinforced by letters addressed by Rubber Board. As noted above, the D.C. has considered in the matter in the light of the well established principles laid down in the decisions of the Supreme Court to which we have already made detailed reference. Similarly, the controversy as to what is raw rubber and whether Articles in question could be termed as raw rubber was referred to for opinion of the rubber board by respondents themselves. In the light of the opinion given by the rubber board which in turn is based on commercial understanding of the goods in question, We do not see any reason to take a different view.

60. We have examined the matter not just in the light of the findings and opinions of the D.C. and Rubber Board but also in the light of the pleadings. Petitioners and respondents ought to be bound by the understanding of the Articles by the trade.

61. In the light of the above, we do not find any basis for challenge by respondents to the finding of D.C. on the items which have been

classified by him as raw rubber. In any event, respondents themselves sought opinion of Rubber Board on this aspect. In the facts and circumstances of the present case, when they are not disputing that these items are brought as inputs then the opinion of Rubber Board which reinforces the conclusion and finding of D.C. need not be set aside by us. Additionally, the Rubber Board has given its opinion on the commercial understanding and usage in the Trade. The manufacturers Association also has forwarded its views. Thus, this is not a matter where commercial word has a distinct understanding of the Articles in question. Therefore, the test laid down by the Supreme Court is applicable.

62. Consequently, on the items which are held to be raw rubber and falling under Entry 70 or also covered as residuary items under Entry 86, petitioners are entitled to lower rate of octroi in terms of clause 1 of Part I-A of Schedule II to the rules. The demands made by respondents on the basis that petitioners are not entitled to lower rate of octroi on these items, therefore, deserves to be quashed and set aside. Instead it is held that respondents are entitled to claim octroi duty at a lower rate specified in clause 1

of Part I-A of Schedule II of Octroi Rules.

63. Part A of the demand that is for the period between 1981 and 30th March 1984 is concerned, petitioners challenge the decision of levying, assessing and collecting octroi on the cost of processing. A resolution was passed to this effect and a demand was raised as early as on 15th November 1985. Petitioners disputed the same vide their reply dated 29th November 1985. It was contended by them that the decision of the erstwhile Council to recover octroi duty at 1% on processing cost only does not mean that any differential duty needs to be paid. Petitioners relied upon Rule 25 of the Bombay Municipal Corporation (Levy of Octroi) Rules, 1965 which according to them, stipulates time limit within which difference in octroi duty can be recovered. According to them, respondents cannot recover the differential duty. Additionally, they contended that the decision goes contrary to the earlier resolution of the Council and, therefore, could not have been reached without affording sufficient opportunity of hearing to them. Mr.Bharucha reiterates these contentions before us. However, he does not rely upon any rule insofar as plea of time bar is concerned. All

that is contended is that the earlier resolution of the Council continues even after the area of the municipal council having merged and forming part of the municipal corporation and reliance is placed on that behalf on section 493 of the Municipalities Act. He submits that the resolution stands and as long as the same is not superseded, the Corporation has no power to resile from the same and make any demand. He submits that it was repeatedly brought to the notice of the Corporation that upto March 30, 1984 semi finished and vulcanised tyres were sent to Bhandup factory and octroi duty was paid as per the resolution of Satpur Municipal Council at 1% on processing cost. After 1st April 1984 commercial production of motor-cycle and scooter tyres commenced at Nashik and, therefore, petitioners started paying octroi duty on the full cost of material received from Bhandup factory at varying rates. Therefore, there are no details of the working of octroi duty claimed as differential amount by the Corporation. Therefore, apart from the fact that the demand is time barred it is contrary to the resolution of the municipal council. As against this, the municipal corporation has filed an affidavit supporting the demand. It is pointed out that

the area comprising Satpur Municipal Council merged in the city of Nashik Municipal Corporation with effect from 7th November 1982 under the relevant provisions of the Bombay Provincial Municipal Corporation Act, 1949. A notification was published in the Government Gazette on 22nd October 1982, the earlier appointments, notifications, notices, taxes, orders, schemes, licence, permissions, rules, by-laws, or forms made, issued, imposed or granted in the Municipal area under the earlier Act i.e. Municipalities Act continued to be in force through out the area of the city until the same are superseded and modified under the BPMC Act or any other law. It is also pointed out that before appointed date i.e. 7th November 1982, the provisions in force for levy of octroi were as per municipal resolution No.51 passed on 31st May 1982. The resolution of 31st May 1982, passed by the Municipal Council which came into effect from 5th July 1982 vide rules 3 and 5 stipulated 2.20% of octroi duty of the *ad voleram* value of the goods mentioned in Item 70. This notification continued till the area was included in Municipal limits. Mr.Gangal invited our attention to the affidavit of the Municipal Corporation filed as early as in June 1997. He

submits that there is no document on record to show that the respondents agreed to any concessional rate much less 1% on the cost of basic raw material. On the other hand, goods imported by the petitioners were rubber goods and rate aforesaid was applied. He submits that there is no substance in the complaint that no details were furnished or that the demand is time barred.

64. In our view, it is too late in the day to go into these issues raised by the petitioners. In our view, it will not be possible, in the absence of petitioners, filing any appeal, to now go into the issue as to whether what was imported by the petitioners was raw rubber or semi finished tyre components. In our view, there is no serious debate on this aspect of the matter and it will not be proper to now set aside this demand. The challenge on the second part of the demand was more seriously pressed and we have gone into the same. The earlier demand in our view, needs to be confirmed. Any challenge to the same ought to have been raised at the earliest and even in the petition as originally filed, the said challenge was belated. We reject the contentions insofar as delay is concerned.

We uphold the demand as made and reject the challenge to the action of the respondents in calling upon the petitioners to pay differential octroi duty at the rate specified in the communication/ letter/ demand notice dated 15th November 1985. We find that the demand is based on the Resolutions passed from time to time. There is no question of any concessional rate once the levy is in consonance with the Resolutions then prevailing as well as in accordance with the rules.

65. In the light of aforesaid conclusion, it is not necessary to refer to all the decisions brought to our notice. In any event, our conclusion as aforesaid is fully supported by the decision of the Supreme Court in the case of Dunlop/ M.R.F.

66. As a result of the aforesaid discussion, Rule is made absolute to the extent indicated below with no orders as to costs:-

a) The demand for octroi raised on the petitioners by the Nashik Municipal Corporation insofar as Reclaimed Rubber, Compounded Rubber and Calendered Fabrics

are concerned, stands confirmed.

(b) In respect of the demand of octroi by the Nashik Municipal Corporation on petitioners insofar as Synthetic Rubber and Masticated Rubber is concerned, it is declared that the same are "Raw Rubber" and, therefore, liable to payment of octroi at a lower rate i.e. Part 1-A of Schedule II;

(c) The respondents will have to, therefore, necessarily re-calculate the quantum of octroi duty based upon the lower rate. It will be open for the respondents to revise their demand for payment of octroi duty and recover the same from petitioners in accordance with law.

(d) As far as the payment for the period commencing from 1981 to 30th March 1984, the demand raised by respondents vide notice dated 15th November 1985 stands confirmed. It will be open for the respondents to recover this amount, if not already recovered in accordance with law.

(e) Since some amounts have already been deposited either in the Court or with the respondents by the petitioners, the same shall be appropriated towards recovery of the aforesaid dues and in the event there is short fall, petitioners will have to make good the same. Needless to observe that in case the amounts deposited are in excess of the aforesaid dues, appropriate adjustments or refund will have to be made.

(f) Parties are at liberty to take appropriate steps in respect of such adjustments/appropriations. We grant time of three months for this entire exercise.

Certified copy expedited.

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(A.P.SHAH, J)

(S.C.DHARMADHIKARI, J)